

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine *Senecio franciscanus* (San Francisco Peaks groundsel) To Be a Threatened Species and Determination of its Critical Habitat.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines a plant, *Senecio franciscanus* (San Francisco Peaks groundsel), to be a Threatened species and determines its Critical Habitat under the authority contained in the Endangered Species Act of 1973, as amended. This plant is endemic to the San Francisco Peaks, north of Flagstaff, Arizona. The known populations occur on land administered by the U.S. Forest Service. The plants are currently threatened by trampling from off-trail hiking. This determination of *Senecio franciscanus* to be a Threatened species with Critical Habitat implements the protection provided by the Endangered Species Act of 1973, as amended.

DATE: The effective date of this rule is December 22, 1983.

ADDRESS: The complete file for this rule is available for inspection during normal business hours by appointment at the Region 2 Office of Endangered Species, U.S. Fish and Wildlife Service, 421 Gold Avenue, SW., Room 407, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Dr. Russell L. Kologiski, Botanist, Region 2 Endangered Species staff (see ADDRESSES above) (505/766-3972), or Mr. John L. Spinks, Jr., Chief, Washington Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20246 (703/235-2771).

SUPPLEMENTARY INFORMATION
Background

Senecio franciscanus was first discovered by Edward L. Greene in 1884 and described by him in 1886. It is a dwarf alpine species, 3.2 to 10.2 centimeters tall. The leaves are deeply lobed, with the upper leaves reduced. The yellow flower heads are 0.9 to 1.3 centimeters wide when in bloom, and are single or in a compact cluster of up to six. The plants are locally common for a distance of approximately 3.2 kilometers, in a total area of less than 2.6 square kilometers between Humphreys and Agassiz Peaks. The elevation of its occurrence is mainly between 3,350 and 3,750 meters. This plant grows on talus slopes as a primary successional species. As an isolated and endemic species, *Senecio franciscanus* is a good example for scientific studies. *Senecio franciscanus* is found in alpine tundra areas of Southwestern spruce-fir forests. Dominant associated species are bristlecone pine (*Pinus aristata*), Engelmann spruce (*Picea engelmannii*), avens (*Geum turbinatum*), almanroot (*Heuchera versicolor*), and gooseberry (*Ribes montigenum*) (Phillips and Peterson, 1980; Fletcher, 1978).

Reproduction is mainly vegetative, by rhizomes, but sexual reproduction does occur. Flowering is in August to early September, and the fruits begin to mature in mid-September. The plants are in winter dormancy by early October. Individuals in more exposed sites produce fewer flowers and fruits than those in more protected locations (Phillips and Peterson, 1980).

Past actions affecting *Senecio franciscanus* began with Section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be Endangered, Threatened, or extinct. This report, designated as House Document No. 94-61, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the 1973 Act (Section 4(b)(3)(A) now), and of its intention thereby to review the status of the plant taxa included within. On June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-

51 and the July 1, 1975, Federal Register publication (40 FR 27823). *Senecio franciscanus* was included in the July 1, 1975 notice of review and the June 16, 1976 proposal. General comments on the 1976 proposal were summarized in an April 26, 1978 Federal Register publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of the withdrawal of the June 16, 1976 proposal along with four other proposals that had expired (44 FR 79766). The Service was again petitioned to list *Senecio franciscanus* on June 18, 1980, by the Navajo Medicine Men's Association, and their petition was accepted by the Service. *Senecio franciscanus* was included in a revised list of plants under review for Threatened or Endangered classification in the December 15, 1980, Federal Register (42 FR 62480-62509). On November 22, 1982, the Service published a proposed rule in the Federal Register (47 FR 52483-52487) to determine *Senecio franciscanus* to be a Threatened species and to determine its Critical Habitat.

Summary of Comments and Recommendations

In the November 22, 1982 proposed rule (47 FR 52483-52487) and associated notifications and press releases, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Letters were sent to the State of Arizona, appropriate Federal, State, and county agencies, scientific organizations, and other interested parties notifying them of the proposed rule and soliciting their comments and suggestions. A newspaper notice was published in the *Arizona Daily Sun* on March 31, 1983, which invited general public comment. Six comments were received during the initial comment period, November 22, 1982, through January 21, 1983, and during an extended comment period March 15, 1983, through May 16, 1983 (48 FR 10896). Written comments were received from the U.S. Forest Service, the Museum of Northern Arizona, and the Flagstaff Chapter of the Arizona Native Plant Society. Three written statements were received representing six private individuals. No public hearing was requested or held.

The U.S. Forest Service stated that their information confirms that *Senecio franciscanus* has a biological status that

merits listing as Threatened. A modification of the Critical Habitat was suggested: deletion of the S½ of the NW¼ of Section 5, T22N, R7E; addition of the NW¼ of Section 5, T22N, R7E; and addition of the NW¼ Section 29, T23N, R7W. This modification was suggested because it more closely outlines the expected lower limits of the preferred habitat of *Senecio franciscanus*. The Forest Service requested additional explanation concerning the effects of the present ski area and effects of increased recreational use of the area. The Forest Service agreed that the economic impact on their agency would be minimal, although any increased expenses would affect other agency programs.

The Service accepts the Forest Service's recommended changes in the Critical Habitat boundaries as more accurately reflecting the biological needs of the species. The operation of the ski lift will not be affected by this final rule. The effect of the ski lift on *Senecio franciscanus* is indirect; it facilitates recreational access to the area, and summer hikers and recreationists could impact the species if use of the trails is not controlled.

The Museum of Northern Arizona, the Arizona Native Plant Society, and the six individuals supported the proposal. Two of these individuals believe that the issuance of the use permits for the skiing facility by the U.S. Forest Service is in violation of the Endangered Species Act because of the potential impact to *Senecio franciscanus*, because the permits were issued after the publication of the proposed rule to list the species as Threatened, because there was no "contact or formal consultation" with the Service, and because no comprehensive biological opinion was prepared.

The Service responds that Federal agencies are not obligated to initiate formal consultation with the Service on actions that may affect a proposed species. Federal agencies are required to informally confer if their actions are likely to jeopardize the continued existence of a proposed species or destroy or adversely modify its proposed Critical Habitat. The Forest Service believed that none of their presently planned activities are likely to jeopardize the continued existence of the proposed species or result in the destruction or adverse modification of the proposed Critical Habitat. The Fish and Wildlife Service agreed.

Summary of Factors Affecting the Species

After a thorough review and consideration of all available

information, the Service has determined that *Senecio franciscanus* (San Francisco Peaks groundsel) should be classified as a Threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424, under revision to accommodate 1982 amendments) were followed. A species may be determined to be an Endangered or Threatened species due to one or more of the factors described in section 4(a)(1). These factors and their application to *Senecio franciscanus* Greene (San Francisco Peaks groundsel) are as follows.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Most of the natural habitat of *Senecio franciscanus* has not been disturbed by unnatural factors such as human disturbance. The proposed expansion of the Snow Bowl ski area could indirectly affect the habitat in which this species is found, however, through an increase in numbers of people using the trail system, which could result in trampling of the plants. A small percentage of the habitat was destroyed by the existing chair lift.

The most severe threat to this species is the activity of summer hikers. Trampling is seriously disturbing some plants along the trails. This includes approximately 25 percent of the population located between the ski lift and Mt. Agassiz. Numerous parallel trails have been worn along the western face and on top of Humphreys Peak. Use of these trails has an adverse affect on all vegetation in and along the trails. The remainder of the plants are undisturbed. Very serious disruption can occur when an occasional hiker crosses or descends the mountain on a loose talus slope (Phillips and Peterson, 1980).

Whether or not expansion of the ski area will have a serious detrimental effect on this species depends on the amount of care taken to minimize such effects. The most serious effect of expansion on the plants would be an increase in summer hikers within the Critical Habitat (Fletcher, 1978; Goodwin, 1981 pers. comm.). Proper planning and routing of hiker traffic away from the plants can alleviate a great percentage of the threat at a minimal cost.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Recreational impacts are discussed in Part A. No other threats from overutilization of this species are known to exist at this time (Phillips and Peterson, 1980).

C. *Disease or predation* (including grazing). There is no evidence that either disease or predation is a contributing factor to the Threatened status of this species (Phillips and Peterson, 1980).

D. *The inadequacy of existing regulatory mechanisms.* At present, there is little to regulate off-trail hiking except a sign explaining the fragility of the tundra and requesting people to stay on the trails. There are multiple trails through the tundra which contribute to the uncontrolled off-trail hiking. Increased recreational pressure on the Peaks will make this situation additionally detrimental to all of the alpine vegetation, including *Senecio franciscanus*. Establishment of a single trail through an area could decrease hiking on the tundra, and could be designed to direct traffic away from large populations of *Senecio franciscanus*. Existing Federal regulations in 36 CFR 261.9 prohibit taking of this species in Coconino National Forest; however, this regulation is difficult to enforce. State law does not protect *Senecio franciscanus*. The Endangered Species Act will provide additional protection for this species through Section 7 (interagency cooperation) requirements and through Section 9, which prohibits taking with intent to reduce to possession on Federal lands.

E. *Other natural or manmade factors affecting its continued existence.* The steep mountain slopes are unstable because of loose cinder talus. Larger species commonly grow in soil at the base of large, relatively stable rock. Smaller plants, such as *Senecio franciscanus*, tend to grow in loose cinders, which are unstable. In winter, steep slopes are subject to avalanche, an extreme natural disturbance.

Critical Habitat

Critical Habitat, as defined by section 3 of the Act and at 50 CFR Part 424, means: (i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection, and (ii) specific areas outside the geographic area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

The Act requires that Critical Habitat be designated to the maximum extent

prudent and determinable concurrent with the determination that a species is Endangered or Threatened. Critical Habitat for *Senecio franciscanus* is being determined in Coconino National Forest, Coconino County, Arizona. The location is: T22N, R7E, N½ of the NW¼ Sec. 5; T23N, R7E, W½ Sec. 32 and W½ Sec. 32 and W½ Sec. 29. This area includes the summits of Agassiz and Humphrys Peaks and the surrounding slopes and alpine area, which comprise the entire known range of *Senecio franciscanus*. This area provides the species with space for its continued existence, growth, and reproduction of individuals and the one known population. The primary constituent elements are the loose cinder talus slopes of the San Francisco Peaks alpine tundra system. Management of this area to reduce disturbance of the talus slopes is necessary to protect the species.

Section 4(b)(8) of the Act requires any proposal or final rule to determine Critical Habitat to be accompanied by a brief description and evaluation of those activities (public and private) which may adversely modify such habitat if undertaken, or may be impacted by such designation. Off-trail hiking has occurred in some parts of the habitat. The disturbance presently affect a small part of the population, but could impact additional individuals if not controlled. Development and implementation of a management plan would aid the preservation of the habitat by regulating off-trail hiking and by monitoring the status of the population. Management might include eliminating some of the existing multiple trails, development of new trails away from large populations of the *Senecio*, or posting signs prohibiting off-trail hiking. Protection of the Critical Habitat will only require minimal expenditures on the part of the U.S. Forest Service to protect this unique plant. Designation of *Senecio franciscanus* as a Threatened species could be used to promote public education about Threatened and Endangered species and could enhance the recreational value of the area (Fletcher, 1978; Fletcher, 1981 pers. comm.).

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared an impact analysis and believes that economic and other impacts of this action on the Forest Service are not significant in the foreseeable future, as discussed in the preceding paragraph. The Fish and Wildlife Service is working with the Forest Service, which has jurisdiction

over the land involved in this action. State and local agencies and other interested organizations also were requested to submit information on economic or other impacts of the proposed action and this information was utilized in completing this analysis. No impacts to these other parties were identified. The economic impact analysis concluded that Federal program costs would initially be less than \$15,000 with subsequent annual costs under \$6,000. No economic impacts on individuals or state and local governments were identified, and no impact on the national or regional economy, commerce, or employment was discerned. The Service's final economic impact analysis was used as part of the basis for the Service's decision not to exclude any area from Critical Habitat for *Senecio franciscanus*.

Available Conservation Measures

Conservation measures provided to species listed as Endangered or Threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by other Federal, State, and private agencies, groups, and individuals. The Endangered Species Act requires that recovery actions be carried out for all listed species and these are initiated by the Service following listing. The protection required of Federal agencies and the taking prohibitions are discussed below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species which is proposed or listed as Endangered or Threatened. Federal agencies are required under Section 7(a)(4) to confer with the Service on any action that is likely to jeopardize proposed species or result in destruction or adverse modification of its Critical Habitat. When species are listed, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of the listed species, and to ensure that their actions are not likely to result in the destruction or adverse modification of its Critical Habitat which has been determined by the Secretary. Provisions for Interagency Cooperation, which implement section 7 of the Act, are codified at 50 CFR Part 402. Possible effects of this rule on the Forest Service have already been discussed. National forest management is not likely to be affected in any significant way. The

Forest Service has stated that *Senecio franciscanus* has a biological status meriting listing as Threatened.

The Act and implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions which apply to all Threatened plant species. With respect to *Senecio franciscanus* all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. Seeds from cultivated specimens of Threatened plants are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exemptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving Threatened species, under certain circumstances. International and interstate commercial trade in *Senecio franciscanus* is not known to exist. It is not anticipated that many trade permits involving plants of wild origin would ever be issued since this plant is not common in commercial cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, states that it is unlawful to remove and reduce to possession Endangered plant species from areas under Federal jurisdiction. Section 4(d) provides for such protection to be extended to Threatened species through regulations. This new protection will accrue to *Senecio franciscanus* once revised regulations are promulgated. Permits for exceptions to this prohibition are available through sections 10(a) and 4(d) of the Act, following the general approach of 50 CFR 17.72 until revised regulations are promulgated to incorporate the 1982 amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and these will be finalized following public comment. All known populations are on the Coconino National Forest, which is administered by the U.S. Forest Service.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903). It is anticipated that few

taking permits for the species will ever be requested.

The service will now review this species to determine whether it should be considered for placement upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, and whether it should be considered for other appropriate international agreements.

National Environmental Policy Act

In accordance with a recommendation from the Council on Environmental Quality (CEQ), the Service has not prepared any NEPA documentation for this proposed rule. The recommendation from CEQ was based, in part, upon a decision in the Sixth Circuit Court of Appeals which held that the preparation of NEPA documentation was not required as a matter of law for listings under the Endangered Species Act. *PLF v. Andrus* 657 F2d 829 (6th Cir. 1981).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of Critical Habitat for this species will not constitute a major rule under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These findings are based upon an economic impact analysis which is

available at the Region 2 Office of Endangered Species, U.S. Fish and Wildlife Service, 421 Gold Avenue, SW., Albuquerque, New Mexico. The Critical Habitat is located entirely upon federally-owned lands; reasonable protective measures will enable ongoing uses to be continued. The analysis concluded that Federal program costs would not exceed an initial \$15,000, nor an annual \$6,000 level, and that there would be no private or State and local expense, and no national or regional economic impact. These findings are also discussed under the section of this pre-amble dealing with Critical Habitat.

References

- Fletcher, R. 1978. *Senecio franciscanus*: Status report. U.S. Forest Service, Albuquerque, NM. 4 pp.
Fletcher, R. 1981. Personal communication. Telephone conversation with FWS personnel, August 14, 1981.
Goodwin, G. 1981. Personal communication. Telephone conversation with FWS personnel, August 21, 1981.
Greene, E. L. 1889. New or Noteworthy Species VI. *Pittonia* 2:13-24.
Phillips, A. M., III, and E. Peterson. 1980. Status report: *Senecio franciscanus*. Office of Endangered Species, U.S. Fish and Wildlife Service, Albuquerque, NM. 13 pp.

Authors

The primary author of this proposed rule is Ms. Sandra Limerick, Endangered Species staff, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico

87103 (505/766-3972). Status information and a preliminary listing package were provided by Dr. Arthur M. Phillips, III and Elaine M. Peterson, Museum of Northern Arizona, Route 4, Box 720, Flagstaff, Arizona 86001 (602/774-5211, Ext. 68). Ms. E. LaVerne Smith of the Service's Washington Office of Endangered Species served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife. Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1513 *et seq.*).

2. Amend § 17.12(h) by adding the following in alphabetical order to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family <i>Senecio franciscanus</i>	San Francisco Peaks groundsel	U.S.A. (AZ)	T	137	17.96(a)	NA.

3. Amend § 17.96(a) by adding the Critical Habitat of *Senecio franciscanus* in the same sequence as it appears in § 17.12(h) (in alphabetical order by family and species).

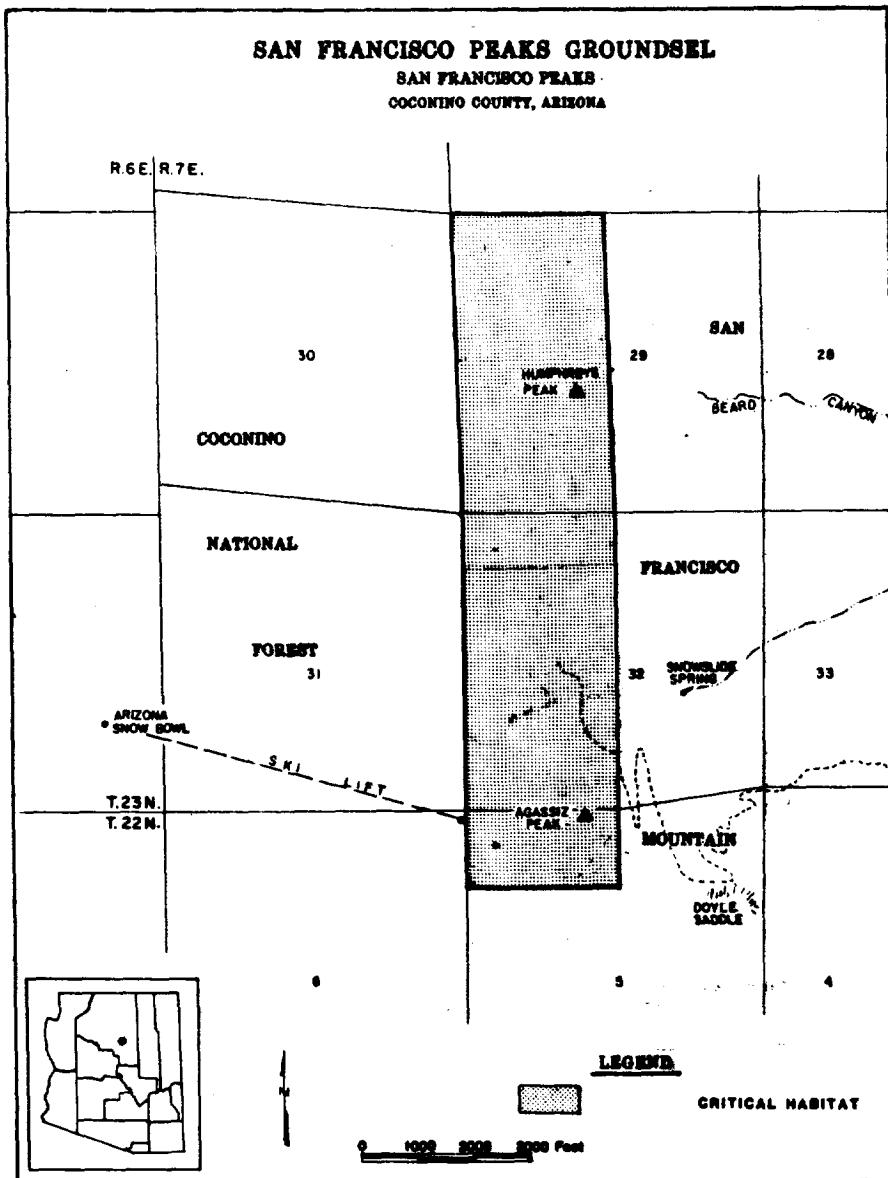
§ 17.96 Critical habitat—plants.

(a) * * *

Family Asteraceae: *Senecio franciscanus* San Francisco Peaks groundsel.

Arizona: Coconino County; Coconino National Forest, Agassiz Peak and Humphreys Peak, T22N, R7E, N½ of

NW¼ Sec. 5; T23N, R7E, W½ Section 32 and W½ Section 29. Primary constituent elements are the loose cinder talus slopes of the alpine tundra system of the San Francisco Peaks and absence of disturbance and damage from hikers.



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Dated: November 15, 1983.

J. Craig Potter,
Acting Assistant Secretary for Fish and
Wildlife and Parks.

[FR Doc. 83-31224 Filed 11-21-83; 8:45 am]

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